

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT DILUGI and CYNTHIA	:	
DILUGI, h/w	:	
vs.	:	NO.: 02-CV-4724
FRANCIS RAHNER and LA ROSA	:	
BAKERY, INC. and LA ROSA'S	:	
PASTRY SHOP	:	

PLAINTIFFS' PRE-TRIAL MEMORANDUM

I. PERSONAL BACKGROUND OF PLAINTIFF

_____Plaintiff, Robert DiLugi was born on December 18, 1952 and is 50 years of age. Mr. DiLugi is married to his wife, Cynthia and the couple has been married for 20 years and have two (2) children, both living at home, Robert, age 10 and Christina, age 16. Mr. DiLugi graduated from Bartram High School in Philadelphia, Pennsylvania in 1972 and is currently a self-employed house painter.

II. FACTS OF ACCIDENT

_____On Wednesday, June 28, 2000 at approximately 3:15 p.m., Robert DiLugi was the operator of his 1985 Chevrolet Van and while stopped on Route 420 in Prospect Park, Pennsylvania, he was suddenly and without warning rear-ended by defendant, Francis Rahner, acting in the course and scope of his employment for LaRosa Bakery.

As a result of the accident above mentioned, the plaintiff suffered neck and low back complaints and first sought medical attention the day following the accident.

III. INJURIES

_____As a result of the above mentioned accident, the plaintiff suffered the following injuries:

1. L4-L5 DISC HERNIATION;
2. L5-S1 DISC HERNIATION;
3. S1 RADICULOPATHY CONFIRMED BY EMG;
4. C6-7 DISC HERNIATION; and
5. BRACHIAL NEURITIS.

IV. MEDICAL TREATMENT

_____As a result of the above mentioned injuries, the plaintiff underwent the following medical treatment:

1. Delaware County Pain Management
6/29/00 - 5/15/01

Diagnosis: cervical intervertebral disc disorder; cervicobrachial syndrome; brachial radiculopathy; lumbar intervertebral disc disorder; lumbosacral radiculitis; headache syndrome; vertigo \$7,502.00
2. Riddle Diagnostic Imaging
7/21/00

Diagnosis: MRI Lumbar Spine - small herniation of the nucleus pulposus centrally at L5-S1. Minimal far left posterolateral herniation of the nucleus pulposus at L5-S1. Minimal far right posterolateral herniation at L4-5
MRI Cervical Spine - mild central herniation of the nucleus pulposus at C6-7. Moderate to mild spondylosis at C5-6, C6-7 and C4-5 \$2,050.00
3. Swarthmore Neurology Associates (Bruce Grossinger, D.O.)
9/15/00 - 11/28/00

Diagnosis: herniated disc at C6-7 and L4-5, L5-S1; bilateral S1 radiculopathy confirmed by EMG \$5,240.00
4. American Medical Rehabilitation
10/03/00 - 5/15/01

Diagnosis: cervicobrachial syndrome; brachial neuritis/radiculitis; lumbar IVD disorder w/o myelopathy; lumbosacral radiculitis \$2,976.00

5. Surgical Orthopedic Associates (Richard Levenberg, M.D.)
11/28 /00 - 3/20/01

Diagnosis: cervical lumbar disc herniation with radiculopathy
cervical, thoracic and lumbar strain and sprain

Recommendation: surgical intervention in the form of
laminotomy/discectomy

\$ 235.00

Total Medicals to date: \$18,003.00

V. SUMMARY OF MEDICAL TREATMENT

_____ Due to continuing lower back and neck complaints, the plaintiff was ordered to undergo an MRI of the neck and lower back, both of which showed herniated discs. Prior to the accident in question, the plaintiff was physically fine and had fully recovered from an accident he was involved in in 1994. The plaintiff came under the care of Bruce Grossinger, D.O., a board certified neurologist who causally relates the cervical and lumbar disc herniations to the accident in question and also diagnosed the plaintiff with an S1 radiculopathy which was confirmed by EMG. Dr. Grossinger referred the plaintiff to orthopaedic surgeon, Richard Levenberg, M.D., who concurred with the above mentioned diagnosis who most recently saw the plaintiff on March 20, 2001, at which time Dr. Levenberg recommended surgical intervention in the form of a lumbar laminectomy/discectomy.

Consideration to surgery has been made by the plaintiff, however at this juncture due to his self-employed status, and being the sole provider of his family, he has opted to decline surgery at this point in time. The plaintiff however, continues to have significant complaints relative to the neck and lower back and is only 50 years old and self-employed.

VI. ARBITRATION RESULT

_____ This matter was tried to a Federal Court arbitration panel on February 19, 2003, wherein a panel of arbitrators, chaired by Clayton Thomas, Esquire, awarded the plaintiff \$40,000.00.

Defendant appealed and no formal offer of settlement has been made to date. The plaintiff has invited the defendant to consider a proposed high/low binding private arbitration before a neutral arbitrator taking the case out of the court system in this clear liability case. Plaintiffs settlement demand prior to the Federal Court arbitration was \$75,000.00, and proposed high/low parameters are \$100,000.00/\$15,000.00.

VII. SETTLEMENT STATUS

No formal offer of settlement has been made and attempts to place this case into a high/low binding arbitration have not materialized as of today's date. A settlement conference would be greatly appreciated with the Court prior to listing the case for trial.

DASHEVSKY, HORWITZ, DISANDRO,
KUHN AND NOVELLO, P.C.

BY: _____
KEVIN M. MALLOY, ESQUIRE
Attorney for Plaintiffs

Date: July 30, 2003